



## **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 52-025 and 52-026; NRC-2008-0252]**

### **Southern Nuclear Operating Company, Inc., Vogtle Electric Generating Plant Units 3 and 4**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC, the Commission) is issuing an exemption from the Commission's regulations in response to a November 1, 2021, request from Southern Nuclear Operating Company, Inc. (SNC), as applicable to Vogtle Electric Generating Plant (VEGP) Units 3 and 4. Specifically, SNC requested a scheduler exemption from NRC regulations that require a holder of a combined license (COL) to implement certain physical protection and personnel access authorization requirements for a power reactor before fuel is allowed onsite (in the protected area). This exemption allows SNC to implement these requirements for each unit after the Commission finds that the acceptance criteria in the COL are met for the unit and prior to that unit's initial fuel load into the reactor.

**DATES:** The exemption was issued on November 23, 2021.

**ADDRESSES:** Please refer to Docket ID **NRC-2008-0252** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2008-0252**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public

Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The request for the exemption was submitted by letter dated November 1, 2021, and is available in ADAMS under Accession No. ML21305B797.

- **NRC’s PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Cayetano Santos Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-7270; email: [Cayetano.Santos@nrc.gov](mailto:Cayetano.Santos@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

SNC, Georgia Power Company, Oglethorpe Power Corporation, MEAG Power SPVM, LLC, MEAG Power SPVJ, LLC, MEAG Power SPVP, LLC, and the City of Dalton, Georgia are the holders of facility COL Nos. NFP-91 and NPF-92, which authorize the construction and operation of VEGP Units 3 and 4. The facilities consist of two Westinghouse Electric Company (Westinghouse) AP1000 pressurized-water reactors located in Burke County, Georgia. The licenses are subject to the rules, regulations, and orders of the NRC.

Paragraphs 52.79(a)(35) and (a)(36) of title 10 of the *Code of Federal Regulations* (10 CFR), “Licenses, Certifications, and Approvals for Nuclear Power

Plants,” require a COL applicant, including for VEGP Units 3 and 4, to include in its final safety analysis report a physical security plan, a safeguards contingency plan, a training and qualifications plan, and a cyber security plan that describes how the applicant will meet the applicable security requirements of 10 CFR part 73 and how the applicant will implement these plans. Vogtle satisfied these requirements in its COL application. For applicants or licensees under 10 CFR part 52, these security plans must carry out the requirements in § 73.55, including the requirements in § 73.55(a)(4) governing physical protection at the site and the requirements in § 73.56, including the requirements in § 73.56(a)(3) governing access authorization at the site.

For VEGP Units 3 and 4, SNC applied for and was issued licenses under 10 CFR part 70, “Domestic Licensing of Special Nuclear Material,” as part of the COLs. These Part 70 licenses authorize possession and use of special nuclear material (SNM) in the forms and for the purposes specified in the COL. As relevant to this exemption, the VEGP Units 3 and 4 COLs (1) authorize the licensee to receive and possess, but not use, SNM as reactor fuel prior to the Commission’s finding under 10 CFR 52.103(g) that the acceptance criteria in the COL are met for a particular unit, and (2) authorize the licensee to use the SNM as reactor fuel, after the Commission has made the § 52.103(g) finding for the unit. After the § 52.103(g) finding is made, the licensee may begin operation, including loading of fuel, in accordance with the conditions of the license.

As required by § 70.22(k), COL applicants seeking to possess SNM of moderate strategic significance (also known as a Category II quantity of SNM) or 10 kg or more of SNM of low strategic significance (also known as a Category III quantity of SNM), as defined in § 70.4, “Definitions,” must have a security plan that identifies how the licensee will meet the applicable security requirements in §§ 73.67(d), (e), (f), and (g) for the protection of the SNM (e.g., unirradiated reactor fuel, intermediate range detectors, etc.). Therefore, SNC developed, and the NRC approved, a physical security plan for VEGP Units 3 and 4 that demonstrates how SNC will meet the applicable security requirements

in § 73.67, “Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.”

## **II. Request/Action**

Pursuant to 10 CFR 73.5, “Specific exemptions,” by letter dated November 1, 2021 (ADAMS Accession No. ML21305B797), SNC requested a schedular exemption from the requirements of §§ 73.55(a)(4) and 73.56(a)(3) to allow VEGP Units 3 and 4 to implement the requirements of a physical protection program in accordance with § 73.55, and the associated personnel access authorization program requirements in accordance with § 73.56, for each unit after the Commission makes its finding under § 52.103(g) for the unit and prior to the start of that unit’s initial fuel load into the reactor. As SNC’s exemption request indicates, the requested exemption would expire when SNC implements the requirements of 10 CFR 73.55 and 73.56.

As required by 10 CFR 73.55(a)(4), “holders of a combined license under the provisions of 10 CFR part 52 of this chapter, shall implement the requirements of this section before fuel is allowed onsite (protected area).” The 2009 Power Reactor Security Requirements Final Rule states, “Section 73.55(a)(4) establishes when an applicant’s physical protection program must be implemented. The Commission concluded that the receipt of [SNM] in the form of fuel assemblies onsite, i.e., in the licensee’s protected area, is the event that subjects a licensee to the requirements of § 73.55. It is the responsibility of the applicant/licensee to implement an effective physical protection program before SNM in the form of fuel assemblies is received in the protected area” (74 FR 13936, March 27, 2009). Similarly, 10 CFR 73.56(a)(3) requires, in part, that “each holder of a combined license under the provisions of part 52 of this chapter, shall implement the requirements of this section before fuel is allowed on site (protected area).”

## **III. Discussion**

Pursuant to § 73.5, the Commission may, upon application by an interested person, or upon its own initiative, grant exemptions from the requirements of

10 CFR part 73, "Physical Protection of Plants and Materials," as it determines (1) are authorized by law, (2) will not endanger life or property or the common defense and security, and (3) are otherwise in the public interest.

**A. The Exemption Is Authorized by Law**

A proposed exemption under 10 CFR 73.5 is authorized by law if it will not endanger life or property or the common defense and security and is otherwise in the public interest, and no other provisions in law prohibit, or otherwise restrict, its application. The NRC has reviewed the exemption request and finds that granting the proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. As discussed below, the NRC also finds that the other requirements for an exemption under 10 CFR 73.5 are met. Accordingly, the NRC finds that the exemption is authorized by law.

**B. The Exemption Will Not Endanger Life or Property or the Common Defense and Security**

The schedular exemption from the requirements of §§ 73.55(a)(4) and 73.56(a)(3) would allow SNC to continue construction activities without having to implement the physical security and access authorization requirements in §§ 73.55 and 73.56, respectively, until prior to each unit's initial fuel load into the reactor. SNC stated that the exemption does not alter the design, function, or operation of any structure or plant equipment that is necessary to maintain a safe and secure status of the plant. Further, the exemption does not alter or otherwise invalidate any Physical Security Hardware-related Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) closure notifications, which would have been submitted to, and accepted by, the NRC staff in advance of the § 52.103(g) finding that the acceptance criteria of the ITAAC in the COL are met.

In its letter dated November 1, 2021, SNC stated, in part, that during the period between the § 52.103(g) finding and the implementation of the physical protection program and access authorization program, SNM will continue to be stored inside the

controlled access area and protected in accordance with the requirements of SNC's NRC-approved § 73.67 special nuclear material physical protection program (SNMPPP). Prior to moving fuel outside the controlled access area (i.e., from the auxiliary building to containment in support of fuel load), the § 73.55 physical protection program and § 73.56 access authorization program will have to be implemented, as the SNMPPP can no longer be used for physical protection. Thus, SNC stated that the exemption has no impact on the licensee's capabilities to protect the unirradiated reactor fuel and intermediate range detectors already on site. And as SNC recognizes, it must implement the requirements of § 73.55 and § 73.56 before moving fuel outside the controlled access area.

As required by 10 CFR 73.55(b)(1) and 10 CFR 73.56(c), applicants for an operating license under the provisions of 10 CFR part 50, and each holder of a COL under the provisions of 10 CFR part 52, shall (1) establish and maintain a physical protection program which will have as its objective to provide high assurance that activities involving SNM are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety and (2) have an access authorization program which provides high assurance that specified individuals are trustworthy and reliable, such that they do not constitute an unreasonable risk to public health and safety or the common defense and security, including the potential to commit radiological sabotage.

The NRC has established a regulatory framework that protects SNM in a manner commensurate with the risk associated with the material. The security requirements in § 73.67 consider the risk significance of the material being protected. Unirradiated reactor fuel brought onsite at nuclear power reactors typically constitutes a Category III quantity of SNM. Because of its low enrichment, unirradiated reactor fuel poses no significant risk to public health and safety and protecting it in accordance with § 73.67 would not be inimical to the common defense and security. The NRC has determined that it is appropriate to protect unirradiated reactor fuel and other non-fuel SNM brought

onsite at an NRC-licensed commercial nuclear power reactor in accordance with § 73.67 until that material is protected in accordance with § 73.55. Therefore, requiring SNC to implement the requirements of §§ 73.55 and 73.56 to protect unirradiated reactor fuel and other non-fuel SNM that is already being protected in accordance with the requirements of § 73.67 is unnecessary.

Unirradiated reactor fuel (or other SNM) that is onsite after the 10 CFR 52.103(g) finding and prior to initial fuel load into the reactor is adequately protected by licensee implementation of the requirements in § 73.67, including the creation of a controlled access area. The security risk only increases once the material is irradiated or if the physical protection requirements are relaxed from that required by § 73.67. Therefore, applying § 73.55 and § 73.56 security requirements to the protection of unirradiated reactor fuel and intermediate range detectors stored onsite prior to initial fuel load into the reactor is unnecessary. SNC's proposal to protect unirradiated reactor fuel and intermediate range detectors under its NRC-approved § 73.67 SNMPPP after the Commission makes its finding under § 52.103(g) and prior to the start of each unit's initial fuel load into the reactor would ensure that the SNM currently onsite is adequately protected.

Accordingly, the NRC finds that the exemption will not endanger life or property or the common defense and security.

### **C. The Exemption is Otherwise in the Public Interest**

In a letter dated November 1, 2021, SNC stated, in part, that the public has an interest in the efficient execution of regulatory activities and that implementing a physical protection program and an access authorization program after the § 52.103(g) finding and before initial fuel load into the reactor, allows construction activities to continue without the burden of adhering to the requirements of §§ 73.55(a)(4) and 73.56(a)(3). Additionally, as stated in § 73.55(b)(1), the objective of § 73.55 is to provide high assurance that activities involving SNM are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety. Per

§ 73.55(b)(3), the physical protection program is designed to prevent significant core damage and spent fuel sabotage. SNC stated that without irradiated fuel there can be no significant core damage or spent fuel sabotage, thereby not constituting an unreasonable risk to the public health and safety. Additionally, the NRC issued a Part 70 license for SNC to receive fuel, and SNC has an NRC-approved SNMPPP to protect the SNM already onsite, where it is stored in a controlled access area. Furthermore, the NRC staff reviewed SNC's SNMPPP and concluded that the plan satisfies the requirements specified in § 73.67. Therefore, SNC indicated that requiring the premature implementation of labor and other resources associated with §§ 73.55 and 73.56 before the § 52.103(g) finding represents a costly and unnecessary burden. Furthermore, the letter stated that granting the exemption would have a beneficial impact on construction of VEGP Units 3 and 4 by allowing personnel to continue to efficiently perform construction activities between the § 52.103(g) finding and the initial fuel load milestone.

As previously stated, the NRC has established a regulatory framework that protects SNM in a manner commensurate with the risk associated with the material. The security requirements in § 73.67 consider the risk significance of the material being protected. Unirradiated reactor fuel brought onsite at nuclear power reactors typically constitutes a Category III quantity of SNM. Because of its low enrichment, unirradiated reactor fuel poses no significant risk to public health and safety and protecting it in accordance with § 73.67 would not be inimical to the common defense and security. The NRC has determined that it is appropriate to protect unirradiated reactor fuel and other non-fuel SNM brought onsite at an NRC-licensed commercial nuclear power reactor in accordance with § 73.67. Therefore, requiring SNC to implement the requirements of §§ 73.55 and 73.56 to protect unirradiated reactor fuel and other non-fuel SNM that is already being adequately protected in accordance with the requirements of § 73.67 is an unnecessary burden on SNC.



Based on the above, the NRC finds that the exemption is otherwise in the public interest.

#### **D. Environmental Considerations**

As further discussed, the NRC has determined that granting this exemption from the requirements of §§ 73.55(a)(4) and 73.56(a)(3) meets the criteria for a categorical exclusion in 10 CFR 51.22(c)(25) because (i) there is no significant hazards consideration, (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure, (iv) there is no significant construction impact, (v) there is no significant increase in the potential for or consequences from radiological accidents, and (vi) the exemption is from scheduling requirements.

The granting of this exemption involves no significant hazards consideration (as defined by 10 CFR 50.92(c)) because:

- The exemption does not alter the design, function, or operation of any plant equipment; therefore, granting the exemption would not involve a significant increase in the probability or consequences of an accident previously evaluated.

- The exemption does not alter the design, function, or operation of any plant equipment or create any new failure mechanisms, malfunctions, or accident initiators.

Therefore, granting the exemption would not create the possibility of a new or different kind of accident from any accident previously evaluated.

- The exemption does not adversely affect any structure, system, or component (SSC), SSC design function, or method of performing or controlling a design function. The exemption does not affect safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit or criterion is challenged or exceeded by the exemption. Therefore, granting the exemption would not involve a significant reduction in a margin of safety.

The requested exemption does not alter the design, function, or operation of any plant equipment, and there are no changes to effluent types, plant radiological or non-radiological effluent release quantities, any effluent release path, or the functionality of any design or operational feature credited with controlling the release of effluents during plant operation or construction. Therefore, the proposed exemption does not involve a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

There are no changes to plant radiation zones, nor any change to controls required under 10 CFR part 20 that preclude a significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the proposed exemption does not involve a significant increase in individual or cumulative public or occupational radiation exposure.

The requested exemption does not alter the materials or methods for constructing or testing of any SSCs, and there is no change to the design or construction of the facility as a result of this exemption. Therefore, the proposed exemption does not involve a significant construction impact.

Finally, the NRC determined, per § 51.22(c)(25)(vi)(G), that the requirements from which the exemption is sought involve scheduling requirements because 10 CFR 73.55(a)(4) and 73.56(a)(3) govern when the requirements of 10 CFR 73.55 and 73.56 must be implemented.

Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in § 51.22(c)(25). Therefore, in accordance with § 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with granting the requested exemption.

#### **IV. Granting of Exemption**

For the reasons stated in this notice, the Commission is granting the following exemption for VEGP Units 3 and 4 because it has determined, pursuant to § 73.5, that

the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest:

- Effective immediately, the Commission hereby grants SNC an exemption for VEGP Unit 3 from the schedule requirements of §§ 73.55(a)(4) and 73.56(a)(3) to allow SNC to implement the physical protection requirements in accordance with § 73.55, and the personnel access authorization requirements in accordance with § 73.56, after the Commission makes its finding under § 52.103(g) for Unit 3 and prior to the start of Unit 3's initial fuel load into the reactor. The exemption for VEGP Unit 3 expires when SNC implements the requirements of 10 CFR 73.55 and 10 CFR 73.56 for VEGP Unit 3, which must occur before initial fuel load for VEGP Unit 3.

- Effective immediately, the Commission hereby grants SNC an exemption for VEGP Unit 4 from the schedule requirements of §§ 73.55(a)(4) and 73.56(a)(3) to allow SNC to implement the physical protection requirements in accordance with § 73.55, and the personnel access authorization requirements in accordance with § 73.56, after the Commission makes its finding under § 52.103(g) for Unit 4 and prior to the start of Unit 4's initial fuel load into the reactor. The exemption for VEGP Unit 4 expires when SNC implements the requirements of 10 CFR 73.55 and 10 CFR 73.56 for VEGP Unit 4, which must occur before initial fuel load for VEGP Unit 4.

For the Nuclear Regulatory Commission.

Dated: November 23, 2021.

**Gregory T. Bowman,**  
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